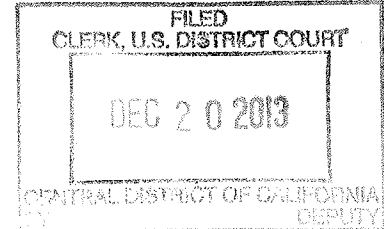


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FLOWERS, ON BEHALF OF
THEMSELVES AND ALL OTHERS
SIMILARLY SITUATED

**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
(WESTERN DIVISION)**

THOMAS FLOWERS, on behalf of
themselves and all others similarly
situated,

Plaintiffs,

v.

SCHIFF NUTRITION, SCHIFF
NUTRITION INTERNATIONAL,
INC., SCHIFF NUTRITION GROUP,
INC., RECKITT BENCKISER
PHARMACEUTICALS INC., and
RECKITT BENCKISER NORTH
AMERICA, LLC,

Defendants.

Case No.

CV13-9406 MWF-MRW

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

1. Plaintiff Thomas Flowers, by and through his attorneys, brings this class action on behalf of himself and similarly-situated others who purchased health supplements containing glucosamine and/or chondroitin manufactured and marketed by Defendants Schiff Nutrition, Schiff Nutrition International, Inc., Schiff Nutrition Group, Inc., Reckitt Benckiser Pharmaceuticals Inc., and Reckitt Benckiser North America, LLC (collectively, "Schiff" or "Defendant") and sold under the brand name "Move Free", and states as follows:

INTRODUCTION AND NATURE OF ACTION

2. Schiff is a manufacturer and marketer of supplements for humans and animals.

3. Schiff sells its products nationally in retail stores (including, for example, Costco, Walmart, Target and Rite Aid) and, online via its website. Schiff sells and ships a significant amount of products to residents of California.

4. Schiff markets, sells and distributes a line of joint health dietary supplements under the label "Move Free" (collectively referred to as the "Supplements").¹ According to the labels on these products, the purported active ingredients are, among others, glucosamine sulfate, chondroitin sulfate.

5. In its uniform, nationwide marketing of the Supplements, Schiff promises that they will help protect cartilage, stimulate cartilage production, improve joint comfort, and improve joint function. Schiff has promoted its products claiming that the Supplements contain both glucosamine and chondroitin, which it claims "help by lubricating, cushioning, strengthening, protecting and rebuilding joints."

6. While Schiff's claims regarding the improved joint function associated

¹ The Supplements include, but are not necessarily limited to 1) Move Free Advanced Triple Strength; and 2) Move Free Advanced Plus MSM.

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1 with the Supplements are directed at anyone seeking to alleviate joint pain or
 2 stiffness, they are particularly directed at people suffering from osteoarthritis.
 3 Indeed, the most common symptoms of osteoarthritis include joint pain and
 4 stiffness—the very symptoms the Supplements claim to remedy.²

5 7. Despite Schiff's claims regarding the benefits and efficacy of
 6 glucosamine and chondroitin, however, the bulk, if not all, of the reliable and
 7 published scientific studies demonstrate that Schiff's claims are false and
 8 misleading.

9 8. Most damning to Schiff's claims is a large scale study sponsored and
 10 conducted by the National Institute of Health ("NIH") called the
 11 Glucosamine/chondroitin Arthritis Intervention Trial ("GAIT"), which concluded, in
 12 a report published in the New England Journal of Medicine, that "[glucosamine and
 13 chondroitin], alone or in combination, was not efficacious. . . ." Clegg, D., et al.,
 14 Glucosamine, Chondroitin Sulfate, and the Two in Combination for Painful Knee
 15 Osteoarthritis, 354 New England J. of Med. 795, 806 (2006).³

16 9. Thus, in addition to affirmatively misrepresenting the joint health
 17 benefits of the Supplements, Schiff's failure to disclose facts regarding this and
 18 other similar studies also constitutes deception by omission or concealment. As a
 19 result, Defendants' joint health benefit representations and omissions are false,
 20 misleading and reasonably likely to deceive the public.

21 10. The misleading representations and omissions by Schiff are conveyed
 22 to the consuming public uniformly and through a variety of media including its
 23 website and online promotional materials and the labeling/packaging of the
 24

25 ² See <http://www.webmd.com/osteoarthritis/guide/osteoarthritis-basics> (noting that the symptoms
 26 of osteoarthritis include "joint aching and soreness," "pain," and "stiffness").

27 ³ The GAIT Study was conducted by the National Center for Complementary and Alternative
 28 Medicine, which, according to its website "is the Federal Government's lead agency for scientific
 research on the diverse medical and health care systems, practices, and products that are not
 generally considered part of conventional medicine."

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1 supplements themselves. In short, Defendants' uniform advertising and marketing
 2 virtually ensure that the only reason a consumer would purchase the Supplements is
 3 to obtain the advertised joint health benefits—benefits that Schiff knows the
 4 Supplements fail to provide.

5 11. As a result of Defendants' deceptive joint health benefit
 6 representations, consumers – including Plaintiff and members of the proposed Class
 7 (defined herein) – have purchased products that do not perform as advertised.

8 12. Plaintiff brings this action on behalf of himself and all other similarly
 9 situated consumers in California to halt the dissemination of this false and
 10 misleading advertising message, correct the false and misleading perception it has
 11 created in the minds of consumers, and obtain redress for those who have purchased
 12 the Supplements based on violations of California unfair competition laws and
 13 breach of express warranties. Plaintiff seeks injunctive and monetary relief for all
 14 consumers who purchased the Supplements.

15 JURISDICTION AND VENUE

16 13. This Court has original jurisdiction pursuant to 28 U.S.C. §
 17 1332(d)(2). The matter in controversy, exclusive of interest and costs, exceeds the
 18 sum or value of \$5,000,000 and is a class action in which there are in excess of 100
 19 class members and many members of the Class are citizens of a state different from
 20 Defendant. Plaintiff Flowers is a citizen of California, and Defendants are citizens
 21 of Delaware, the state of incorporation and New Jersey, the state where the principal
 22 place of business is located.

23 14. This Court has personal jurisdiction because Defendant is authorized to
 24 conduct and does conduct business in the State of California. Defendant has
 25 marketed, promoted, distributed and sold the Supplements in California and
 26 Defendant has sufficient minimum contacts with this State and/or sufficiently avails
 27 itself of the markets in this State through its promotion, sales, distribution and
 28 marketing within this State to render the exercise of jurisdiction by this Court

1 permissible.

2 15. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(a) and (b)
3 because a substantial part of the events or omissions giving rise to Plaintiff's claims
4 occurred in this judicial district. Venue is also proper under 18 U.S.C. § 1965(a)
5 because Defendant transacts substantial business in this District. Venue is further
6 proper in this District pursuant to 28 U.S.C. §1391(b)(2) because Plaintiff Flowers
7 and numerous Class Members reside in this District, were subjected to Defendant's
8 misleading advertisements in this District, were induced through Defendant's
9 advertisements to purchase the Supplements in this District, and sustained damages
10 in this District.

11 PARTIES

12 16. Plaintiff Thomas Flowers is a California citizen residing in Goleta,
13 California. Plaintiff Flowers suffers from chronic joint pain in his fingers, hands,
14 knees, elbows, and shoulders. Plaintiff Flower's ailments exist on a daily basis and
15 have progressively worsened over time. In an effort to remediate such pain and
16 discomfort and to improve his joint health, Plaintiff purchased Schiff brand
17 Supplements on several occasions. In particular, during the Class Period Plaintiff
18 Flowers repeatedly purchased Schiff brand Supplements at retail stores located in
19 the Santa Barbara and Goleta area in reliance on Schiff's claims that the products
20 would rebuild cartilage and provide joint health benefits. Plaintiff Flowers
21 purchased Schiff brand Supplements to combat and prevent further cartilage damage
22 and joint pain. Plaintiff Flowers paid approximately \$20 per 120 tablet bottle of
23 Move Free Advanced Plus MSM, and approximately \$20 per 80 tablet bottle of
24 Move Free Advanced Triple Strength. If Plaintiff Flowers was aware that Schiff
25 had both misrepresented the benefits of the Supplements he would not have
26 purchased Schiff brand Supplements. Plaintiff Flowers used Schiff brand
27 Supplements as directed and did not receive any of the promised benefits. As a
28 result, Plaintiff Flowers suffered an injury in fact and lost the money associated with

1 his purchase.

2 17. Defendant Schiff Nutrition is, on information and belief, a wholly-
3 owned subsidiary of Reckitt Benckiser North America, LLC, a New Jersey company
4 with its principal place of business at 399 Interpace Parkway; Parsippany, NJ 07054.
5 At all relevant times, Schiff has advertised, marketed, provided, offered, distributed,
6 and/or sold the Supplements throughout the United States including to individuals in
7 California such as Plaintiff and the Class.

8 ALLEGATIONS

9 The False and Misleading Marketing Claims

10 18. This lawsuit concerns the products marketed and sold by Schiff
11 including, but not limited to: 1) Move Free Advanced Triple Strength; and 2) Move
12 Free Advanced Plus MSM (all listed and unlisted products referred to herein,
13 collectively, as the "Supplements").⁴ These products frequently come in a variety of
14 dosages and sizes, so the total number of relevant products sold by Schiff may
15 exceed those listed above.

16 19. Marketed as joint health dietary supplements, the Supplements
17 purportedly relieve joint pain through the combination of their ingredients.

18 20. According to Defendant's website, the Supplements works as follows:
19 Our original Triple Strength product was the first with the powerful Advantage of 4
20 – Uniflex to protect your joints, Joint Fluid to replenish your joints and Glucosamine
21 and Chondroitin help to rebuild your joints.

22 See <http://www.schiffvitamins.com/move-free-advanced-triple-strength-80-count>
23 (last accessed October 13, 2013).

24 21. The primary active ingredient in the Supplements is glucosamine
25 hydrochloride. Glucosamine is an amino sugar that the body produces and
26 distributes in cartilage and other connective tissue. The Supplements also contain
27 _____

28 ⁴ Plaintiff reserves the right to include other products upon completion of discovery.

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1 chondroitin sulfate. Chondroitin sulfate is a complex carbohydrate found in the
2 body's connective tissues.

3 22. There is no competent scientific evidence that taking glucosamine
4 hydrochloride chondroitin sulfate results in the body metabolizing it into something
5 that provides the advertised joint health and cartilage benefits, including relieving
6 the major symptoms of arthritis.

7 23. Contrary to the representations on all of the Supplements' packaging,
8 Defendant does not possess (and has not possessed) competent scientific evidence
9 that any of these ingredients, taken alone or in combination, are effective in
10 providing the advertised joint health and cartilage benefits, including treating the
11 major symptoms of arthritis or any joint related ailments.

12 24. According to Defendant's website and to the packaging/label, the
13 Supplements state that "[g]lucosamine and [c]hondroitin help by lubricating,
14 cushioning, strengthening, protecting and rebuilding joints."

15 25. In short, Schiff engages in a pervasive and widespread marketing
16 campaign to drive sales of its product, luring consumers into purchasing the
17 Supplements by making claims that the Supplements are efficacious in treading and
18 remedying joint pain and discomfort.

19 **Multiple Clinical Studies Demonstrate That the Supplements Are Ineffective**

20 26. Schiff's representations about the efficacy of the ingredients in the
21 Supplements products are totally contradicted by all credible scientific evidence.
22 Indeed, since 2004, multiple clinical studies have found that glucosamine and
23 chondroitin, alone or in combination, are not effective in providing the represented
24 joint health benefits.

25 27. In 2004, one study concluded that glucosamine was no more effective
26 than a placebo in treating the symptoms of knee osteoarthritis. McAlindon et al.,
27 Effectiveness of Glucosamine For Symptoms of Knee Osteoarthritis: Results From
28 an Internet-Based Randomized Double-Blind Controlled Trial, 117(9) Am. J. Med.

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1 649 (Nov. 2004).

2 28. Indeed, as early as 2004, other clinical studies indicated a significant
 3 “placebo” effect when patients consumed products they were told had the potential
 4 to cure joint aches and pains. For example, one 2004 study involved a six-month
 5 study of the effects of glucosamine compared with placebo and concluded that there
 6 was no difference in primary or secondary outcomes between the two. Cibere et al.,
 7 Randomized, Double-Blind, Placebo-Controlled Glucosamine Discontinuation Trial
 8 In Knee Osteoarthritis, 51(5) Arthritis Care & Research 738-45 (Oct. 15, 2004).
 9 The authors concluded that the study provided no evidence of symptomatic benefit
 10 from continued use of glucosamine and that perceived benefits were, in fact, due to
 11 the placebo effect and not any real benefit provided by glucosamine. Id.

12 29. In 2006, the first GAIT study concluded that “[t]he analysis of the
 13 primary outcome measure did not show that either supplement, alone or in
 14 combination, was efficacious.” 2006 GAIT Study at 806. Subsequent GAIT studies
 15 in 2008 and 2010 reported that glucosamine and chondroitin did not rebuild
 16 cartilage⁵ and were otherwise ineffective – even in patients with moderate to severe
 17 knee pain for which the 2006 GAIT study reported results were inconclusive. See
 18 Sawitzke, A.D., et al., The Effect of Glucosamine and/or Chondroitin Sulfate on the
 19 Progression of Knee Osteoarthritis: A GAIT Report, 58(10) J. Arthritis Rheum.
 20 3183–91 (Oct. 2008); Sawitzke, A.D., Clinical Efficacy And Safety Of
 21 Glucosamine, Chondroitin Sulphate, Their Combination, Celecoxib Or Placebo
 22 Taken To Treat Osteoarthritis Of The Knee: 2-Year Results From GAIT, 69(8) Ann
 23 Rhem. Dis. 1459-64 (Aug. 2010).

24 30. The GAIT studies are consistent with the reported results of other

25
 26 ⁵ To a similar effect, a study by Kwok, et al., entitled *The Joints On Glucosamine (JOG)*
 27 *Study: A Randomized, Double-Blind, Placebo-Controlled Trial To Assess The Structural*
 28 *Benefit Of Glucosamine In Knee Osteoarthritis Based On 3T MRI*, 60 Arthritis Rheum
 725 (2009), concluded that glucosamine was not effective in preventing the worsening of
 cartilage damage.

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1 studies that have demonstrated the ineffectiveness of both glucosamine and
 2 chondroitin.

3
 4 31. In 2008, a study concluded that glucosamine was no better than a
 5 placebo in reducing either the symptoms or progression of hip osteoarthritis.
 6 Rozendaal et al., Effect of Glucosamine Sulfate on Hip Osteoarthritis, 148 Ann. of
 7 Intern. Med. 268-77 (2008).

8 32. A 2010 a meta-analysis examined prior studies involving glucosamine
 9 and chondroitin, alone or in combination, and reported that the collection of studies
 10 supported a conclusion that those compounds neither reduced joint pain nor had an
 11 impact on the narrowing of joint space. Wandel et al., Effects of Glucosamine,
 12 Chondroitin, Or Placebo In Patients With Osteoarthritis Or Hip Or Knee: Network
 13 Meta-Analysis, BMJ 341:c4675 (2010).

14 33. Another 2010 study concluded that there was no difference between
 15 placebo and glucosamine for the treatment of low back pain and lumbar
 16 osteoarthritis and that there was no data recommending the use of glucosamine.
 17 Wilkens et al., Effect of Glucosamine on Pain-Related Disability in Patients With
 18 Chronic Low Back Pain and Degenerative Lumbar Osteoarthritis, 304(1) JAMA 45-
 19 52 (July 7, 2010).

20 34. In 2011, a summary article reviewed the available literature and
 21 concluded that "[t]he cost-effectiveness of these dietary supplements alone or in
 22 combination in the treatment of OA has not been demonstrated in North America."
 23 Miller, K. and Clegg, D., Glucosamine and Chondroitin Sulfate, Rheum. Dis. Clin.
 24 N. Am. 37 (2011) 103-118.

25 35. Most recently, a meta-analysis synthesized all available studies
 26 evaluating the efficacy of glucosamine for treating osteoarthritis and concluded that
 27 glucosamine showed no pain reduction benefits for osteoarthritis. Wu D. et al.,
 28 Efficacies of different preparations of glucosamine for the treatment of

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1 osteoarthritis: a meta-analysis of randomised, double-blind, placebo-controlled
2 trials, 67(6) Int. J. Clin. Pract. 585-94 (June 2013).

3
4 36. Scientific studies have also shown that the other ingredients in the
5 Supplements are similarly ineffective. See, e.g., S. Brien, et. al., Systematic Review
6 Of The Nutritional Supplements (DMSO) And Methylsulfonylmethane (MSM) In
7 The Treatment Of Osteoarthritis, 16 Osteoarthritis and Cartilage, 1277 (Nov. 2008);
8 Usha PR and Naidu MU, Randomised, Double-Blind, Parallel, Placebo-Controlled
9 Study of Oral Glucosamine, Methylsulfonylmethane and their Combination in
10 Osteoarthritis, 24 Clinical Drug Investigation 353-63 (2004); see also Biegert C et
11 al., Efficacy and Safety of Willow Bark Extract in the Treatment of Osteoarthritis
12 and Rheumatoid Arthritis: Results of 2 Randomized Double-Blind Controlled Trials,
13 Journal of Rheumatology 31.11 (2004): 2121-30 (no efficacy for willow bark as
14 compared with placebo and willow bark less effective than low dosages of non-
15 steroidal anti-inflammatory); see also Abdel-Tawb, M., et al., Boswellia Serrata: An
16 Overall Assessment Of In Vitro, Preclinical, Pharmacokinetic And Clinical Data, 50
17 Clin Pharmacokinet. 349-69 (2011).

18 37. Doctor's Best's claims that the Supplements Products "stimulate"
19 cartilage are also totally belied by the available scientific evidence:

20 38. In October 2008, the GAIT Study also concluded that glucosamine
21 and/or chondroitin, alone or in combination, did not demonstrate a clinically
22 important difference in joint space loss, indicating that they were ineffective in
23 rebuilding or regenerating cartilage. Sawitzke et al., The Effect of Glucosamine
24 and/or Chondroitin Sulfate on the Progression of Knee Osteoarthritis, A Report from
25 the Glucosamine/Chondroitin Arthritis Intervention Trial, 58 Arthritis Rheum. 3183-
26 3191 (2008).

27 39. In April 2009, the Journal of Orthopaedic Surgery published an article
28 that concluded that there was scant evidence to support a claim that glucosamine was

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1 superior to placebo in even arresting the deterioration of cartilage, to say nothing of
2 arresting that process and promoting regeneration or rebuilding. Kirkham, et al.,
3 Review Article: Glucosamine, 17(1) Journal of Orthopaedic Surgery 72-6 (2009).

4 **Schiff Harms Consumers By Continuing To Market And Sell the Supplements**

5 40. Undeterred by the weight of scientific evidence demonstrating that the
6 ingredients in the Supplements are wholly ineffective, Schiff conveyed and
7 continues to convey one uniform message: the Supplements maintain joints and
8 promote growth of cartilage.

9 41. As the manufacturer and/or distributor of the Supplements, Schiff
10 possesses specialized knowledge regarding the efficacy of the ingredients contained
11 in its products and, moreover, is in a superior position to, and has, learned of the
12 lack of efficacy for all of the key ingredients in the Supplements.

13 42. Specifically, Schiff knew, but failed to disclose, that the Supplements
14 do not provide the joint health benefits represented and that well-conducted, clinical
15 studies have found the ingredients in the Supplements to be ineffective in providing
16 the joint health benefits represented by Schiff.

17 43. Plaintiff and Class members have been and will continue to be deceived
18 or misled by Defendant's deceptive joint health benefit representations. Plaintiff
19 purchased and consumed one of the Supplements during the Class Period and in
20 doing so, read and considered the advertising and marketing by Schiff and based his
21 decision to purchase the Supplements on the joint health benefit representations on
22 the packaging and on Defendant's website. Schiff's joint health benefit
23 representations and omissions were a material factor in influencing Plaintiff's
24 decision to purchase and consume the product he purchased.

25 44. Other than obtaining the benefits that the Supplements promise but do
26 not deliver, there is no other reason for Plaintiff and the Class to have purchased the
27 Supplements as the Supplements are not represented to provide any other benefits
28 and Plaintiff and the Class would not have purchased the Supplements had they

1 known Schiff's joint health benefit statements were false and misleading and that
 2 clinical cause and effect studies have found the ingredients to be ineffective for the
 3 represented joint health benefits.

4 45. As a result, Plaintiff and the Class members have been injured in fact in
 5 their purchases of the Supplements in that they were deceived into purchasing
 6 Products that do not perform as advertised.

7 46. Schiff, by contrast, reaped enormous profit from its false marketing and
 8 sale of the Supplements.

9 CLASS DEFINITION AND ALLEGATIONS

10 47. Plaintiff Thomas Flowers brings this action on behalf of himself and all
 11 other similarly situated persons pursuant to Rule 23(a), (b)(2), and (b)(3) of the
 12 Federal Rules of Civil Procedure and seeks certification of the following Class:

13 All consumers who, within the applicable Class Period,
 14 purchased the Supplements within the State of California.

15 Excluded from the Class are Schiff, its parents, subsidiaries,
 16 affiliates, officers and directors, and those who purchased the
 Supplements for resale.

17 48. Plaintiff reserves the right to amend or modify the Class definitions
 18 with greater specificity or further division into subclasses or limitation to particular
 19 issues after discovery.

20 49. The Class satisfies the numerosity, commonality, typicality, adequacy,
 21 predominance and superiority requirements of Federal Rule of Civil Procedure 23(a)
 22 and (b)(3).

23 50. The members of the Class are so numerous that joinder of all members
 24 is impracticable. Although the precise number of Class members is unknown to
 25 Plaintiff at this time and can be determined only by appropriate discovery, it is
 26 reasonably estimated that the Class consists of thousands of purchasers of the
 27 Supplements who have been damaged by Schiff's conduct as alleged herein.

28 51. Because Plaintiff is a purchaser of the Supplements who has been

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1 subjected to Defendant's deceptive and misleading course of conduct, intent to trick,
 2 mislead, and significantly confuse consumers, Plaintiff is a member of the Class,
 3 and his claims are typical of the claims of the members of the Class. The harm
 4 suffered by Plaintiff and all other Class members was and is caused by the same
 5 misconduct by Defendant.

6 52. Plaintiffs will fairly and adequately represent and protect the interests
 7 of the Class, in that Plaintiff has no interest antagonistic to, nor in conflict with, the
 8 Class. Plaintiff has retained competent counsel, who are experienced in consumer
 9 and commercial class action litigation, to further ensure such protection and who
 10 intend to prosecute this action vigorously.

11 53. A class action is superior to other available methods for the fair and
 12 efficient adjudication of this controversy. Because the monetary damages suffered
 13 by individual Class members are relatively small, the expense and burden of
 14 individual litigation make it impossible for individual Class members to seek redress
 15 for the wrongful conduct asserted herein. If Class treatment of these claims was not
 16 available, Defendant would likely continue its wrongful conduct, would unjustly
 17 retain improperly obtained revenues, or would otherwise escape liability for its
 18 wrongdoing as asserted herein.

19 54. Common questions of law and fact exist as to all members of the Class,
 20 which predominate over any questions that may affect individual Class members.
 21 Among the questions of law and fact common to the Class are the following:

- 22 1. Whether Defendant violated California Business and Professions Code
- 23 17500, et seq.;
- 24 2. Whether Defendant violated California Business and Professions Code
- 25 17200, et seq.;
- 26 3. Whether Defendant breached the implied covenant of good faith and
- 27 fair dealing in its sales transactions with Plaintiffs and the Class
- 28 Members; and
4. The appropriate measure of damages or other relief to which Plaintiffs
- and the Class members are entitled.

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1 members of the Class, money obtained through its violation of California Business
2 & Professions Code § 17500, et seq., which Defendant continues to hold for its sole
3 benefit.

4 63. Accordingly, Plaintiff, on behalf of himself and all others similarly
5 situated, seek equitable relief in the form of an order requiring Defendant to refund
6 to Plaintiff, and the Class all monies they paid for the Supplements above and, in
7 addition, an order requiring Defendant to cease claiming that the Supplements “help
8 rebuild cartilage & lubricate joints.”

9 **SECOND CAUSE OF ACTION**
10 **(California Unfair Competition Law –Cal. Bus. &**
Prof. Code§ 17200, et seq.)

11 64. Plaintiff Flowers incorporates by reference and reasserts each
12 allegation contained in the preceding paragraphs and further alleges as follows:

13 65. Defendant engaged in unlawful conduct under California Business &
14 Professions Code § 17200, et seq., by falsely claiming that the Supplements “help
15 rebuild cartilage and lubricate joints.”

16 66. Defendant’s conduct is unlawful in that it violates the False Advertising
17 Law, California Business & Professions Code § 17500, et seq.

18 67. Defendant’s conduct is unfair in that it offends established public
19 policy or is immoral, unethical, oppressive, unscrupulous, unconscionable, or
20 substantially injurious to Plaintiff Flowers and the Class. The harm to Plaintiff
21 Flowers and the Class members arising from Defendant’s conduct outweighs any
22 legitimate benefit Defendant has derived from the conduct.

23 68. Defendant’s misrepresentations and omissions are likely to mislead a
24 reasonable consumer.

25 69. Plaintiff Flowers and members of the Class relied on Defendant’s
26 misrepresentations and omissions.

27 70. As a direct and proximate result of Defendant’s violations, Plaintiff
28 Flowers and members of the Class would not have otherwise purchased the

1 Supplements, or would have paid less, and therefore, suffered injury in fact and lost
2 money.

3
4 71. Plaintiff Flowers and the Class members, seek reimbursement of
5 monies they paid for the Supplements. Additionally, Plaintiff Flowers and the Class
6 members seek equitable and injunctive relief on behalf of themselves and the Class
7 members pursuant to Cal. Business & Professions Code § 17203.

8 **THIRD CAUSE OF ACTION**
9 **(Unjust Enrichment on behalf of the Class)**

10 72. Plaintiff incorporates by reference and reasserts each allegation
11 contained in the preceding paragraphs and further alleges as follows:

12 73. Plaintiff's cause of action for unjust enrichment is pled in the
13 alternative to other causes of action asserted herein.

14 74. As a result of Defendant's misconduct in the form of deceptive
15 marketing of the Supplements as set forth above, Defendant has received a benefit at
16 the expense of Plaintiff and the Class members that would be unjust for Defendant
17 to retain.

18 75. As a result of Defendant's unjust enrichment, Plaintiff and the Class
19 Members are entitled to the return of the financial unjust benefit conferred by
20 Plaintiff and Class members on Defendant.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiff, on behalf of himself and the Class, requests the
23 following relief:

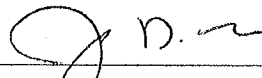
- 24 A. An order that this action may be maintained as a Class Action under
25 Rule 23 of the Federal Rules of Civil Procedure, that Plaintiff be
26 appointed Class representatives for the Class, and that Plaintiff's
27 counsel be appointed as counsel for the Class;
- 28 B. A permanent injunction against Defendant, restraining, preventing and
enjoining Defendant from engaging in the illegal practices alleged;
- C. An order requiring Defendant to disgorge the profits wrongfully
obtained through the use of its illegal practices;

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- D. Actual damages;
- E. An award of attorneys' fees;
- F. An award of the costs of suit reasonably incurred by Plaintiff and his counsel;
- G. An award of interest, including prejudgment interest, at the legal rate, and;
- H. Such other and further relief as the Court deems necessary and appropriate.

DATED: December 20, 2013.

Respectfully submitted,

By: 

Jonathan D. Miller
Jennifer M. Miller
**NYE, PEABODY, STIRLING, HALE, &
MILLER, LLP**

By: _____/s/_____

Benjamin J. Sweet (*Pro Hac Pending*)
Edwin J. Kilpela, Jr (*Pro Hac Pending*)
**DEL SOLE CAVANAUGH STROYD
LLC**

By: _____/s/_____

R. Bruce Carlson (*Pro Hac Pending*)
Stephanie Goldin (*Pro Hac Pending*)
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CARLSON LYNCH LTD
PNC Park

Proposed Lead Counsel

Attorneys for Plaintiff THOMAS FLOWERS,
on behalf of himself and all others similarly
situated,

NYE, PEABODY, STIRLING, HALE & MILLER
33 WEST MISSION STREET, SUITE 201
SANTA BARBARA, CALIFORNIA 93101

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial of his claims by jury to the extent authorized by law.

DATED: December 20, 2013.

Respectfully submitted,

By: 

Jonathan D. Miller
Jennifer M. Miller
**NYE, PEABODY, STIRLING, HALE, &
MILLER, LLP**

By: _____/s/_____

Benjamin J. Sweet (*Pro Hac Pending*)
Edwin J. Kilpela, Jr (*Pro Hac Pending*)
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